

## TASMANIAN RACING APPEAL BOARD

### Appeal No 4 of 2016/17

<b>Panel:</b>	<b>Mr Tom Cox (Chair) Mrs Kate Brown (by phone) Dr Sue Martin (by phone)</b>	<b>Appellant:</b>	<b>Mr Scott Ford</b>
<b>Appearances:</b>	<b>The appellant in person Mr Paul Turner on behalf of Director of Racing</b>		
<b>Heard at:</b>	<b>Hobart</b>	<b>Date:</b>	<b>10 November 2016</b>
<b>Decision to which this appeal relates:</b>	<b>To not grant a Driver A Licence</b>	<b>Result:</b>	<b>Dismissed</b>

### REASONS FOR DECISION

1. On 10 November 2016 the Tasmanian Racing Appeal Board (the "TRAB") heard an appeal by Scott Ford, filed on 25 October 2016, against the refusal by the Director of Racing to grant him a licence pursuant to his application filed on 15 July for a driver A licence.
2. Mr Ford's licence was refused by the Director on the basis that Mr Ford is not a fit and proper person to be associated with harness racing. Mr Ford contends otherwise.

#### **The Evidence**

3. The following material was before the Board prior to the Hearing:
  - a) The Notice and Grounds of Appeal filed on 25 October;
  - b) The Licence Application Form received by the Office of Racing Integrity on 15 July 2016;
  - c) Letter to Mr Ford from the Director of Racing dated 5 August 2016;
  - d) Letter to Mr Ford from the Director of Racing dated 18 August 2016;
  - e) Letter to Mr Ford from the Director of Racing dated 13 October 2016;
  - f) Offence Report for Mr Ford printed 28 October 2016;
  - g) Media Release dated 11 April 2016;
  - h) Letter to Mr Ford from the Director of Racing dated 9 June 2016;
  - i) Fine and notification of Penalty issued 15 August 2016;
  - j) Cash receipt issued re payment of outstanding fine 3 November 2016;

- k) Email from Scott Ford to Director of Racing dated 21 September 2016; and
  - l) Magistrates Court list (Hobart) from 3 October 2016 pertaining to Mr Ford.
4. The following documents were made available to the TRAB during the course of the hearing:
- a) Letter from MAX Employment dated 10 November 2016;
  - b) Decision of the Racing Appeals Tribunal of New South Wales re John Scott dated 15 July 2015;
  - c) National Police Certificate in relation to Mr Ford dated 11 March 2014; and
  - d) Written submissions from Mr Turner dated 10 November 2016.
5. Evidence was also given by Mr Ford at the hearing, who was questioned by the Board and Mr Turner for the Director. Submissions were made by Mr Ford and by Mr Turner on behalf of the director. The Board also had regard to previous findings of the Integrity Assurance Board and the TRAB made in respect of licensing appeals by Mr Ford, being numbers 1 of 2014/15 and 12 of 2015/2016, which are a matter of public record.
6. It is noted that some of the evidence referred to herein pertains to matters currently before the Magistrates Court. The *Commissions of Inquiry Act 1995* applies to TRAB proceedings pursuant to s30(7) of the *Racing Regulation Act 2004*. The *Commissions of Inquiry Act* s.21 provides: “*evidence given by a person before a Commission is not admissible in subsequent legal proceedings*” unless those proceedings involve a breach of the *Commissions of Inquiry Act* itself. This is relevant as during the course of the hearing Mr Ford gave evidence about the matters before the Magistrates Court for which he is yet to be sentenced, but has pleaded guilty.

#### **The Director’s power to refuse to grant a licence - Rule 90(5)**

7. Pursuant to s.6(2)(f) of the *Racing Regulation Act 2004* (the “*Act*”), the Director is responsible for granting licences under the Rules of Racing. The Rules of Racing, in turn, provide by rule 90(5) that an application for a licence may be refused by the Director “*without assigning any reason.*”
8. The Rules of Racing are rules to which industry participants become contractually bound, but they are also given statutory consequences.<sup>1</sup> For instance, by s.111(2) of the *Act* the Rules of Racing may provide for the suspension of registrations, the creation of offences and imposition and recovery of fines.
9. Although rule 90(5) may afford the Director with a contractual right to refuse to grant a licence and to do so without providing an applicant with reasons for such a decision, the Director has confined his position to require satisfaction that Mr Ford is a fit and proper person to be associated with the harness industry. In

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<sup>1</sup> NSW Thoroughbred Racing Board v. Waterhouse & Anor. [\[2003\] NSWCA 55](#) at [35]

other words, for the purposes of this appeal, the Director submits that under the Rules of Racing Mr Ford must satisfy this Board that he is a fit and proper person to be associated with the harness racing industry. If he does, it should follow, that his appeal should succeed.

10. Because the Rules of Racing are in the nature of a binding contract between the Director and industry participants, we will proceed on the basis proposed by the Director, however, it should be noted that we have not concluded that rule 90(5) necessarily imports a requirement for an applicant to be a fit and proper as a pre-requisite to the Director exercising his right to refuse to grant a licence. That issue can be left for another day.

### **Fit and Proper Person**

11. The appeal before the Board was pursuant to s.28A(1)(a) of the Act against the refusal by the Director of Racing to grant a licence. As such the onus was on Mr Ford to demonstrate that he ought to be granted the licence he was seeking. The key issue for the Board (as it had been for the Director) was whether Mr Ford was a fit and proper person to hold a licence within the harness racing industry. Rule 90(6) of the Australian Harness Racing Rules provides that a licence may be suspended or cancelled by the Director where the Director is satisfied that the person holding the licence is not a “fit and proper person” to be associated with harness racing. While it is not specifically stated that a requirement for the granting of a licence is that the applicant is a fit and proper person to be associated with harness racing, the Board, as noted above, will proceed on the basis that Mr Ford meets that prerequisite.
12. The nature of Mr Ford’s appeal is not such that he needs to demonstrate an error by the Director; rather he bears the onus of satisfying the Board that he ought properly be granted a licence. Thus the Board is not limited to consideration only of the material before the Director when the licence was refused or the basis upon which he made his decision, but may have regard to all material before it at the hearing; that is the documentation noted above, and the evidence and submissions at the hearing on 10 November.
13. The interpretation of “fit and proper person” was dealt with by the High Court in *Australian Broadcasting Tribunal v Bond* [\(1990\) 170 CLR 321](#). In paragraph 36 of their joint decision Justices Toohey and Gaudron stated:

*“The expression “fit and proper person”, standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of “fit and proper” cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as*

*to likely future conduct) may be sufficient to ground a finding that a person is not a fit and proper person to undertake the activities in question."*

14. The context with which Mr Ford seeks to operate is the racing industry. It is trite to point out that to ensure its continuation the racing industry must maintain both a perception and a reality of the highest standards of integrity.
15. The matters considered by the TRAB (in no particular order) in assessing Mr Ford's fitness and propriety can be categorised broadly as follows:
  - a) Mr Ford's offence history as a participant in the racing industry generally;
  - b) Mr Ford's history since having a licence granted by the TRAB on 1 March 2016;
  - c) Mr Ford's history of candour or otherwise in his dealing with the Office of Racing Integrity ;
  - d) Mr Ford's admissions around use of illicit substances and possession of illegal firearms, currently the subject of charges in the Magistrates Court of Tasmania.

### **Mr Ford's Offence History**

16. The offence history the TRAB was referred to ran to some 40 pages, but it is noted that the first offences occurred in 1986, some thirty years ago, and that Mr Ford has been an active participant in the industry through that period. It is also noted that much of the offending involves driving offences for which he has been fined or reprimanded, which has little bearing on the matters before the Board. However it is noted that Mr Ford has throughout that period offended with regularity against those rules pertaining to behaviour towards stewards and at inquires, and without noting all of those, we note that the first of those occurred in 1994 and the last in 2016. As well as those offences, Mr Ford has a number of convictions of presenting horses not free from prohibited substances, and significantly has at times offended whilst he has been granted a stay of suspension or disqualification pending appeal, and of undertaking activities whilst unlicensed to do so. Significantly, bearing in mind Mr Ford's current criminal charges, he was convicted in March 2003 of being drug affected whilst carrying on a licensed activity, suspended for 78 days and required to attend drug counselling.
17. It is noted that his pattern of offending has not abated with maturity nor experience.
18. It is particularly noted that Mr Ford's licence was revoked in September 2014 on the basis he was no longer a fit and proper person to hold a licence within the industry. That is dealt with in the IAB decision No 1 of 2014-15. Pertinently from that decision:

- a) At the time of that hearing Mr Ford had been disqualified for twenty six per cent of the time since 1 January 2000, and had only returned from a lengthy period of disqualification in March 2014; and
- b) At a race meeting on 31 August 2014 it was found by the IAB that Mr Ford had slammed a door so hard leaving an inquiry that the windows in the building shook in their frames, and that as the Chairman of Stewards followed Mr Ford to charge him with misconduct in relation to that, Mr Ford turned and approached him being verbally aggressive and shaking his finger. The IAB accepted that it was open to the stewards present to conclude that Mr Ford may have been intending to assault the Chairman of Stewards.

19. At paragraph 37 of that September 2014 decision the IAB stated:

*“The Board notes particularly that Mr Ford is a mature man and has long experience within the industry. He has breached the rules regarding his conduct on the track and towards stewards on many occasions. He has apparently not learnt from the penalties imposed on those occasions. Further, his record demonstrates a general disregard for the rules in that he has on three occasions been found guilty of presenting a horse with a prohibited substance present. His long record of participation in the industry is therefore something of a double-edged sword: he has offended on many occasions, and has been given many opportunities to learn from penalties imposed. The Director rightly pointed out that a licence within the industry is not an entitlement but a privilege in that participants must be able to demonstrate an understanding of and acceptance of the rules that apply and the authority of those charged with enforcing those rules. Despite having so recently being allowed to re-enter the industry after serving a long period of disqualification, albeit at a much lower level than that at which he previously participated, Mr Ford remains unable to regulate his response to those in authority.”*

20. Mr Ford applied for and was granted a non-race day stablehand licence in February 2015. In September 2015 he applied for a driver’s licence which the Director refused to grant. That refusal was appealed by Mr Ford and upheld by a majority of the TRAB, effectively on the basis that in accepting Mr Ford was a fit and proper person to participate in the racing industry as a stablehand, the Director’s argument that Mr Ford was not a fit and proper person to hold a driver’s licence was flawed (IAB decision No 12 of 2015/2016). At that time ( 1 March 2016) the Board stated at paragraph 30:

*“Mr Ford should be aware that in light of the way he ran his case before the Board, in that he accepted that he had now done all he could to address the basis upon which his licence was revoked, and had effectively addressed that problem, that should he breach the rules in that way again, he is unlikely to be able to persuade a licensing body that he is capable of reform or rehabilitation (although such a matter would necessarily turn on the circumstances at the time).”*

### **Mr Ford's history since the licence was granted on 1 March 2016**

21. The evidence before the TRAB on 10 November 2016 was that on 10 March 2016 Mr Ford was asked to provide a urine sample which he failed to do. Mr Ford was found guilty of that charge by stewards and did not appeal that finding or penalty. His licence was suspended for a period of three months.
22. There was further evidence before this Board that on 15 August 2016 Mr Ford was found guilty of carrying on a licensed activity at the Brighton Training Complex on 4 August 2016, whilst not the holder of a licence. He was fined \$200. That fine was not paid until 3 November 2016, after this appeal was lodged. He did not appeal that finding or penalty.

### **Mr Ford's candour or otherwise in his dealing with the Office of Racing Integrity**

23. It ought go without saying that fitness and propriety encompasses an expectation of honesty and candour in dealing with others.
24. It is noted that on the application submitted to the Office of Racing Integrity on 15 July 2016, the rejection of which was the subject of this appeal, Mr Ford misrepresented his criminal history. In response to the question "*Have you ever been convicted of an offence punishable by fine or imprisonment or both either in Tasmania or elsewhere... (a) Traffic Related offences [or] Any other Offence*" in each case Mr Ford selected the "no" box. When questioned about this he conceded that he had in fact been so convicted but submitted that it is common practice to tick "no" to that question. A copy of a National Police Certificate on Mr Ford's file, dated 11 March 2014, confirmed his dishonesty in answering that question: in fact amongst other matters Mr Ford has twice had suspended sentences of imprisonment imposed for drink driving offences in the past.
25. There were other instances of Mr Ford being less than candid in his evidence and submissions during the hearing, which did not amount to dishonesty but which were concerning in light of his assertion that he was a fit and proper person to be licensed in the racing industry. In both his evidence and submission he displayed a propensity to minimise his wrongdoings, to evade responsibility and blame others, or proffer doubtful explanations. In relation to the charge of failing to provide a urine sample on 10 March 2016 (of which he had been found guilty by stewards, and had not appealed) he gave evidence that attributed that failing to his physical inability to provide a sample when initially asked and then being delayed at work at the time he had arranged to provide it. Given the evidence referred to below about his use of illicit substance during 2016, this Board does not accept his assertion that he was unable to provide the urine sample because of being delayed at work. Further his evidence around the work he was doing on that day was that he was digging trenches: when challenged about the assertions made in the tendered letter from MAX employment that Mr Ford was incapable of performing that physical labour, Mr Ford represented that he had in fact been driving a digger. It is noted that letter goes on to set out that "truck driving, delivery work and warehousing work" had been "deemed to be physically unsuitable now". It is not necessary for this Board to make any

finding about Mr Ford's physical fitness or otherwise for any sort of work, but his lack of candour around that is noted.

### **The current matters before the Magistrates Court of Tasmania**

26. The documents before the TRAB included a printout from the Magistrates Court website dated 3 October 2016. That revealed that Mr Ford was to appear that day in relation to four separate complaints arising from his driving a motor vehicle whilst having amphetamines in his blood, driving whilst unlicensed and possession of ammunition without the appropriate firearms licence. During the hearing it became apparent that he was also facing charges of possession of a sawn off shotgun; that he had pleaded guilty to all current charges and was to be sentenced in December 2016.
27. When questioned about the amphetamine use Mr Ford gave evidence of significant use of amphetamines and cocaine from early January 2016, when it became apparent that his bank as bringing proceeding to take possession of his family home for non-payment of his mortgage, until May 2016 when he ceased using those drugs. When it was pointed out that the last of the charges of driving with amphetamine in his blood (to which he had pleaded guilty) occurred in July 2016 he changed his evidence to state that his drug use ceased in July.
28. When questioned about the possession of firearms initially Mr Ford gave evidence that he had that to keep down the "wildlife" on his son's property, by which he meant rabbits and kangaroos. He said that he had purchased it from an associate expecting it to be a normal shotgun, that he had taken delivery of it from a third party three days earlier, and had not yet had an opportunity to return it to the associate on the basis that it was not what he was after. He stated that the gun was kept in a shipping container on his son's property and conceded it was not in a gun safe. He stated that his son could not deal with the "wildlife" on the property himself because he was a disqualified person (and it is noted the property in question has stables on it), and he was simply helping his son out by purchasing the firearm.
29. Under cross examination it was put to Mr Ford (who conceded he had used firearms before and therefore had an understanding of the use to which various firearms might be put) that a sawn-off shotgun would be entirely ineffective in shooting rabbits and kangaroo because of its limited range. Mr Ford was unable to give any credible response to this and stated instead *"I've never robbed anyone and I have no convictions for shooting anyone"*. He did not, as one might have expected at this point, reiterate that he had not intended to purchase a sawn-off shotgun. While the Board makes no positive finding about Mr Ford's intentions with regard to the sawn off shotgun, it does not accept that he intended to purchase a normal shotgun nor that he intended to use it for culling rabbits and kangaroos. It is noted that it was stored incorrectly and he did not have a gun licence to use any firearm.
30. It is further noted that when Mr Ford completed the application form dated 15 July, all the current charges were before the court, and whilst he was not

specifically asked about outstanding charges, he did not raise those with the Office of Racing Integrity either.

### **Mr Ford's personal circumstances**

31. The Board heard some evidence from Mr Ford as to the personal difficulties he had been experiencing in recent times. That is of very limited relevance to the question of whether he is a fit and proper person to hold a licence in the racing industry. The issue for the Board in dealing with licensing matters is regulatory not punitive; it must therefore focus on what is in the interests of the integrity of the racing industry, not what is in the interests of Mr Ford.

### **Conclusion**

32. Mr Ford has demonstrated repeated non-compliance with not only the conditions of his licence in the racing industry, but also the conditions of his licence to drive over a very long period. He has been in breach of the rules relating to prohibited substances. He has four convictions for drink driving. He has pleaded guilty to four charges of driving whilst having an illicit substance in his blood in recent months. He has convictions for driving whilst unlicensed and he has breached the rules of racing by performing activities for which a licence was required, whilst not having one. He has numerous breaches of the rules for misconduct against stewards. He has been in possession of firearms and ammunition without a licence. His history of personally drug use and the use of prohibited substances in the industry strikes both at the integrity of industry and the safety of other participants within it.
33. It is clear that Mr Ford does not readily abide by the rules that regulate the industry. He has had numerous opportunities to demonstrate that he could mend his ways and has consistently failed to do so. He has been less than candid in his dealings with the Office of Racing Integrity, the stewards and this Board.
34. The TRAB concludes that Mr Ford is not a fit and proper person to hold a licence within the racing industry. It finds that he is not capable of compliance with the rules of racing or meeting the standards of integrity expected of participants.
35. Pursuant to s.34 of the Act, after hearing an appeal the TRAB must make an order regarding the disposal of the prescribed deposit paid by the appellant. If the appeal is unsuccessful not less than 50% of the prescribed deposit is to be forfeited. In determining the extent to which the remaining 50% is to be refunded to the appellant the TRAB may have regard to a number of matters, including what is fair and appropriate in all the circumstances. While the TRAB consider that the grounds of appeal were far from strong it notes Mr Ford's financial situation and that he has a dependent wife and child, and that the effect of this decision will be that he will not be able to return to the racing industry to derive an income. It orders that the 50% balance of the deposit be returned to Mr Ford.